IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3500 of 2002
With
SPECIAL CIVIL APPLICATION No. 9370 of 2002

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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STATE OF GUJARAT & 1 - Petitioner(s)
Versus
VIRJI LALJIBHAI & 1 - Respondent(s)

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Appearance :
MR AJ DESAI, AGP for Petitioner(s) : 1 - 2.

MR HM PRACHCHHAK for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6
MR AK CLERK WITH MR CG GOVINDAN for Respondent(s) : 2,

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/10/2007

COMMON ORAL JUDGMENT

1. Both these petitions challenge the order dated

15th March, 2001, passed by the Gujarat Revenue Tribunal, Ahmedabad in Appeal No.TEN/AR/1/92, hence both the petitions were heard together and are disposed of by this common judgment.

2. Special Civil Application No.3500 of 2002 has been filed by the State of Gujarat whereas Special Civil Application No.9370 of 2002 has been filed by the Rajkot Municipal Corporation.

3. The facts of the case as emerging from the record are that as waste lands forming part of Survey No.374 of Rajkot City had not been entered in the revenue record maintained by the Talati, an inquiry in respect of ownership of the said land was carried out by the City Survey Officer, who by an order dated 27.11.1972 held that lands admeasuring Acre 0 – 25 Gunthas were of the ownership of one Sureshkumar Jagmohan Mehta. Thereafter pursuant to an application made by Shri Laljibhai Jerambhai Patel before the City Survey Inquiry Officer, a detailed inquiry was carried out and by an order dated 21.12.1973 the name of Sureshkumar Jagmohan Mehta was cancelled and it was held that Patel Laljibhai Jerambhai was the owner of the said land. As the proceedings in this regard appeared to be irregular, the order dated 21.12.1973 was taken in revision and by an order dated 13.10.1979 the same was quashed and set aside and the matter was remanded to the Deputy Collector, Rajkot for carrying out a fresh inquiry under Section 37(2) of the Bombay Land Revenue Code,

1879 ('the Code').

4. The Deputy Collector, Rajkot after carrying out inquiry under Section 37(2) of the Code, by an order dated 7.12.1982 held that non-agricultural lands admeasuring Acre 0 – 25 Gunthas as well as waste lands admeasuring Acre 0 – 10 Gunthas, in all, lands admeasuring Acre 0 – 35 Gunthas, of Survey No.374/3 were of the ownership of Laljibhai Jerambhai Patel. The aforesaid order dated 7.12.1982 passed by the Deputy Collector, Rajkot was taken in revision by the Collector, Rajkot, and by an order dated 31.12.1983, the order dated 7.12.1982 was confirmed insofar as it held that Laljibhai Jerambhai was the owner of Acre 0 – 25 Gunthas of the land, whereas in respect of land admeasuring Acre 0 – 10 Gunthas (hereinafter referred to as the land in dispute), the order was quashed and set aside and the matter was remanded to the Deputy Collector, Rajkot for carrying out fresh inquiry.

5. Pursuant to the order of remand, the Deputy Collector, Rajkot by an order dated 19.7.1991 held that the land in dispute was Government land and that the heirs of late Laljibhai Jerambhai Patel (hereinafter referred to as the respondents) have not been able to prove their case.

6. The respondents carried the aforesaid order dated 19.7.1991 in the appeal before the Collector, Rajkot, who by an order dated 20.9.1991 dismissed the appeal and confirmed the order passed

by the Deputy Collector, Rajkot.

7. The order dated 20.9.1991 passed by the Collector, Rajkot was challenged by the respondents before the Gujarat Revenue Tribunal (the Tribunal). The Tribunal by an order dated 15.3.2001 allowed the appeal and held that the respondents were the owners of the land in dispute which has given rise to the present petitions at the instance of the State of Gujarat and the Rajkot Municipal Corporation.

8. Heard Mr.A.J. Desai, learned Assistant Government Pleader for the State of Gujarat, Mr.C.G. Govindan, learned advocate appearing for Mr.A.K. Clerk, learned advocate for Rajkot Municipal Corporation and Mr.H.M.Prachchhak, learned advocate appearing on behalf of the heirs of deceased Laljibhai Jerambhai Patel.

9. Mr.A.J. Desai, learned Assistant Government Pleader has assailed the impugned order passed by the Tribunal contending that the Tribunal had erred in holding that the respondents have established ownership in respect of the land in dispute. He has submitted that both the Deputy Collector, Rajkot as well as the Collector, Rajkot had after appreciating the facts of the case and making detailed inquiry into the matter, come to the conclusion that the respondents had not been able to establish ownership over the land in dispute, hence the Tribunal ought not to have disturbed the concurrent findings of

fact recorded by two authorities and come to a different finding. He has further submitted that there was no evidence on record to show that the respondents were the actual owners of the land in dispute. He has contended that the finding arrived at by the Deputy Collector that the land in dispute was part of Survey No.372 and not Survey No.374, as claimed by the respondent No.1, was arrived at after considering all the evidence on record and that the same had rightly been confirmed by the Collector, Rajkot. Therefore, the Tribunal had erred in coming to the conclusion that the land in dispute formed part of Survey No.374 and not Survey No.372 as held by the authorities below. In conclusion Mr.Desai submitted that the orders passed by the Collector, Rajkot as well as the Deputy Collector, Rajkot were just, legal and proper and the Tribunal had erred in interfering with the same. He, accordingly, prayed that the impugned order passed by the Tribunal be quashed and set aside and the orders passed by the Collector, Rajkot and the Deputy Collector, Rajkot be restored and confirmed.

10. Mr.C.G. Govindan, learned advocate appearing for the Rajkot Municipal Corporation has adopted the submissions made by the learned Assistant Government Pleader.

11. Mr.H.M.Prachchhak, learned advocate appearing on behalf of the respondents has supported the order passed by the Tribunal. He has contended that the

orders passed by the Collector, Rajkot and the Deputy Collector, Rajkot holding that the land in dispute formed part of land of Survey No.372 are based on presumptions and assumptions and have no basis whatsoever. He has submitted that the original occupier of the subject lands was one Ghachi Boda Ghaji, whose name was reflected in the revenue record at the relevant time in respect of lands admeasuring Acres 22 – 38 Gunthas of Survey No.374. Out of the aforesaid lands, Acre 0 – 35 Gunthas was shown as pot kharaba land and Acres 22 – 3 Gunthas was shown as agricultural land. Subsequently, the revenue record was promulgated and the name of late Laljibhai Jerambhai Patel was not shown as occupier of the said land but till date the same was in possession of his heirs. It was submitted that the authorities below, namely the Deputy Collector and the Collector, Rajkot have not properly appreciated the said facts. It was further submitted that ample evidence had been produced by late Laljibhai Jerambhai Patel, to show that he was in possession and occupation of the land admeasuring Acre 0 – 35 Gunthas which was part and parcel of Survey No.374 of Rajkot City. He has further submitted that even the evidence of Government Officers, namely, Shri K.B.Jhala, Maintenance Surveyor and Shri U.G. Mehta, Maintenance Surveyor, supported the case of the petitioner. He has submitted that all this evidence had been ignored by the two authorities below, hence the Tribunal was justified in interfering with the same. He has further drawn the attention of the Court to

the fact that in 1958, an encroachment case had been filed against late Laljibhai Jerambhai Patel, and subsequently after perusing the documentary as well as oral evidence, the City Mamlatdar, Rajkot had dismissed the said encroachment case. He has submitted that in view of the over-whelming evidence on record produced by late Laljibhai Jerambhai and his heirs, the Tribunal had rightly held that the respondents were the owners of the land in dispute and has rightly quashed and set aside the orders passed by the Collector, Rajkot and the Deputy Collector, Rajkot. He has, accordingly, urged that the petitions are totally devoid of any merit and are required to be rejected.

12. From the facts narrated hereinabove, it is apparent that this case has a chequered history, wherein proceedings have been remanded on several occasions for fresh inquiry.

13. From the facts noted hereinabove, it is apparent that by an order dated 7.12.1982, it was held that the respondents are owners of Acre 0 – 35 Gunthas of land bearing Survey No.374/3. The said order was taken in revision by the Collector, Rajkot, who by an order dated 31.12.1983 confirmed the order dated 7.12.1982 insofar as it was held that the respondents were owners of Acre 0 – 25 Gunthas of land but quashed and set aside the order in respect of the remaining Acre 0 – 10 Gunthas of land, and remanded the matter to the Deputy Collector, Rajkot

for carrying out fresh inquiry. It was pursuant to the said order that further inquiry was made in respect of the respondents' claim of ownership of Acre 0 – 10 Gunthas of land bearing Survey No.374/3. In the light of the aforesaid facts, it is evident that right from the inception, the claim of the respondents was in respect of Acre 0 – 35 Gunthas of land. Whereas upon perusal of the order dated 20.9.1991 passed by the Collector, Rajkot, it is apparent that the Collector has proceeded on the assumption that, earlier, lands admeasuring Acre 0 – 25 Gunthas had been held to be of the ownership of the respondents and that subsequently the respondents have increased their claim from time to time. Thus there is a basic fallacy in the order of the Collector, Rajkot.

14. Apart from the aforesaid, as can be seen from the impugned order passed by the Tribunal, the Tribunal has held that the land in dispute forms part of Survey No.374 and is of the ownership of the respondents. The aforesaid finding of fact is based upon the following evidence produced on record by the respondents.

(a) The total area of Survey No.374 of Rajkot City is Acres 22 – 38 Gunthas, out of which Acre 0 – 35 Gunthas are waste land, and Acres 22 – 03 Gunthas are cultivable land.

(b) As per the deposition given by Shri

Harilal Sundarlal Karia on 31.11.1973, whereby he produced the tippan book of 1969 which shows the total area of Survey No.374 to be Acres 22 – 38 Gunthas, out of which Acres 22 – 03 Gunthas are cultivable land and Acre 0 – 35 Gunthas are waste lands. Therefore, it is prima facie evident that Acre 0 – 35 Gunthas of waste land forms part of Survey No.374, and since the time of the State, the land bearing Survey No.374 is of private ownership.

(c) Waste land of private ownership would continue to be of private ownership. Merely because it is classified as waste land, it cannot be said to be Government land.

(d) As per the deposition of Surveyor Shri C.B. Jani dated 17.11.1973, the total area of Survey No.374 is Acres 22 – 38 Gunthas, out of which Acre 0 – 35 Gunthas is waste land and Acres 22 – 03 Gunthas is cultivable land and the same are shown to be held by Ghachi Boda Ghaji. These facts have been accepted by the Survey Department, hence it is evident that Acre 0 – 35 Gunthas of waste land which forms part of Survey No.374 is of private ownership.

(e) Upon perusal of the revenue record, it is seen that Survey No.374 has been divided into three Hissas, and Hissa No.2, Acre 0 – 35 Gunthas has been shown to be waste land.

(f) In 1958 joint measurements were carried out by the District Inspector of Land Records and a representative of the Municipality, according to which, Acres 3 – 32 Gunthas of land bearing Survey No.374 was occupied by Patel Lalji Jeram, out of which non-agriculture permission had been granted in respect of Acres 2 – 29 Gunthas, and the remaining Acre 1 – 3 Gunthas was clearly in the occupation and possession of Lalji Jeram since 1958.

(g) In 1958 an encroachment case was lodged before the Mamlatdar which was dismissed and at that time also it was held that the waste land of Survey No.374 is of private ownership.

(h) In 1958 the Taluka Surveyor had carried out site verification, according to which, Acre 1 – 3 Gunthas of waste land of Survey No.374 was held by Lalji Jeram.

(i) On 17.11.1973 panchkyas had been carried out in presence of the Inquiry Surveyor and a representative of the Municipality and the panchnama in this regard, clearly shows that Lalji Jeram was in possession of the waste land since the time of the State and since waste lands are not cultivable, the same had never been cultivated.

(j) On 7.11.1973 the deposition of Shri G.J.Joshi, representative of the Municipality had been recorded, according to which, Acres 3 – 32 Gunthas of lands possessed by Lalji Jeram were always used as waste lands.

(k) From the record produced by the District Inspector of Land Records on 22.11.1973, wherein from the copy of field wise register kayam kharda, the total area of Survey No.374 is shown to be Acres 22 – 38 Gunthas, out of which Acre 0 – 35 Gunthas is clearly shown to be waste land.

(l) Moreover, insofar that the land in dispute having been assumed to be a part of Survey No.372 is concerned, if one considers that the total area of Survey No.372, the same is shown to be Acres 37 – 32 Gunthas and by an order dated 22.5.1981, the Collector had handed over the possession of open waste lands to the Rajkot Municipality which is shown to be Acres 37 – 34 Gunthas of Survey No.372. At the relevant time also, it was never the case of the Municipal Corporation or the State Government that the land in dispute forms part of the land handed over to the Rajkot Municipality.

15. On the basis of the evidence noted hereinabove, the Tribunal came to the following conclusions:

(i) That the land in dispute does not appear to be part of Survey No.372, accordingly the order of the Collector, that the land in dispute is Government land is based only on assumptions and is not based upon any evidence on record.

(ii) From the record of the case, the land in dispute is clearly shown in the Revenue Record to be wasteland, which forms part of Survey No.374. Thus, the land in dispute is clearly shown to be private wasteland and there is no evidence to show that the Municipality has any right or interest in the said land.

(iii) The land in dispute being part of private wasteland, is a wasteland forming part of the original survey number, hence, according to the provisions of the Code, the same cannot be said to be Government land but has to be considered to be private land.

(iv) The evidence on record supports the case of the respondents that the land in dispute is part of Survey No.374/3. Hence, all the contentions raised on behalf of the respondents deserve to be accepted. Whereas the case of the Government that the land in dispute forms part of Survey

No.372 is based solely on assumptions and is not based on any clinching evidence like tracing of map to clearly show that the land in dispute forms part of Survey No.372. Hence, the submissions made on behalf of the Government do not deserve acceptance.

16. The Tribunal has accordingly held that the finding of the Collector that the land in dispute is Government land, being based solely on assumptions is not in consonance with the provisions of the Code and that the Collector has failed to appreciate the evidence on record in proper perspective. The Tribunal has also held that there is nothing on record to show that the Rajkot Municipality has any right or interest in the land in dispute. The Tribunal has further held that the land in dispute is in the possession of the respondents since thirty years and the Collector had recognized the same and granted non-agricultural permission in respect of Acre 0 – 25 Gunthas. That, the decision of the Collector that the remaining wasteland admeasuring Acre 0 – 10 Gunthas is not owned by the respondents, but is Government land, does not find support from the evidence on record and is accordingly bad and not in consonance with the actual record of the case. The Tribunal has accordingly, allowed the appeal and held that the respondents are the owners of the land in dispute and quashed and set aside both the orders passed by the Collector, Rajkot as well as Deputy

Collector, Rajkot.

17. From the facts noted above, it is apparent that the Tribunal has based its findings after carrying out a detailed appreciation of the evidence on record. The findings of fact recorded by the Tribunal are interalia based upon documentary evidence produced by the State as well as the depositions of the State authorities recorded in the proceedings in the present case. In the face of the ample evidence on record, it is apparent that both the Deputy Collector and the Collector, Rajkot have ignored the evidence produced on record and have based their findings on assumptions and presumptions merely on the ground that the land in dispute, being waste land, is Government land.

18. Moreover, as noted in paragraph 13 hereinabove, the order of the Collector is further vitiated by the fact that he has proceeded on the assumption that the respondents have increased their claim from time to time and that the claim for Acre 0 – 10 Gunthas of land is raised subsequently. Upon considering the evidence recorded by the Tribunal, no infirmity can be found in the order of the Tribunal in coming to the conclusion that the respondents are the owners of the land in dispute.

19. For the foregoing reasons, this Court is in complete agreement with the findings recorded and the ultimate conclusions arrived at by the Tribunal.

Both these petitions are devoid of any merit or substance and deserve to be rejected. The petitions are, accordingly, rejected. There shall be no order as to costs. Rule is discharged.

(HARSHA DEVANI, J.)

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